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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,915	12/10/2003	Bryan S. Jeanfreau	21295.00	6686
37833	7590	10/05/2005		
LITMAN LAW OFFICES, LTD PO BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			EXAMINER GREENE, JASON M	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/730,915

Applicant(s)

JEANFREAU, BRYAN S.

Examiner

Jason M. Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 20 is/are rejected.
- 7) ☒ Claim(s) 2-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/10/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claims*

1. Claim 2 recites the phrase "the pen-shaped body" in lines 5-6. However, the claim does not previously recite a pen-shaped body. It appears as though the phrase "the pen-shaped body" is referring to the pen-shaped housing recited in claim 1 and the Examiner has interpreted the phrase accordingly. If this is correct, the Examiner suggests Applicants rewrite the phrase "the pen-shaped body" as "the pen-shaped housing" to provide clearer antecedent basis.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the improper Markush group "selected from the group comprising a disperse, fibrous material or a nano non-woven fibrous material" in lines 2-3. Specifically, since the limitation recited the phrases "comprising" and "or", it is not

clear if the filter media is intended to be limited to the recited materials. The Examiner notes that the limitation has been interpreted as though it were written in proper Markush format. If this interpretation is correct, the Examiner suggests Applicants rewrite the limitation as "selected from the group consisting of a disperse, fibrous material and a nano non-woven fibrous material".

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Borkenstein.

Borkenstein discloses a filtering and deodorizing device capable of filtering and deodorizing burp gas comprising a substantially elongated, tubular, generally cylindrical pen-shaped housing (10) having an upper end and a lower end (when the housing is angled downwardly) and defining a central axis, said upper end of the pen-shaped housing defining a gas intake port (13), said lower end of the pen-shaped housing defining at least one gas exhaust port (14), and a gas filtration (filter paper 18,20) and deodorization (calcium sulfate) media disposed within the pen-shaped housing in Fig. 1 and col. 3, lines 8-35.

With regard to the device being for filtering and deodorizing burp gas, intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530 (CCPA 1971). Purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666 (PTO Board of Appeals 1969). Inclusion of the material worked upon by a structure being claimed does not impart patentability to the claims, *In re Otto et al.*, 136 USPQ 458 (CCPA 1963). A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of that claimed, *Ex parte Masham*, 2 USPQ 2d 1647 (PTO Board of Appeals 1987).

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Jackson.

Jackson discloses a filtering and deodorizing device capable of filtering and deodorizing burp gas comprising a substantially elongated, tubular, generally cylindrical pen-shaped housing (10) having an upper end and a lower end (when the housing is angled downwardly) and defining a central axis, said upper end of the pen-shaped housing defining a gas intake port (14,18 during exhalation), said lower end of the pen-shaped housing defining at least one gas exhaust port (not numbered, adjacent valve 44), and a gas filtration (filter paper) and deodorization (charcoal) media (46) disposed within the pen-shaped housing in Figs. 6 and 7 and col. 3, line 31 to col. 4, line 7.

With regard to the device being for filtering and deodorizing burp gas, intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530 (CCPA 1971). Purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666 (PTO Board of Appeals 1969). Inclusion of the material worked upon by a structure being claimed does not impart patentability to the claims, *In re Otto et al.*, 136 USPQ 458 (CCPA 1963). A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of that claimed, *Ex parte Masham*, 2 USPQ 2d 1647 (PTO Board of Appeals 1987).

***Allowable Subject Matter***

7. Claims 2-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claim 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

With regard to claims 2 and 4-20, Borkenstein is directed to a breathalyzer for determining the content of ethanol in a person's bloodstream. Jackson is directed to a cigarette holder for treating exhaust smoke.

The prior art made of record does not teach or fairly suggest the device of claim 1 further comprising an ink cartridge axially disposed within the pen-shaped housing, and a writing tip attached to said lower end of the pen-shaped housing, said ink cartridge being attached to the writing tip, said ink cartridge and said pen-shaped housing defining an annular space therebetween, said gas filtration and deodorization media being disposed substantially within said annular space.

With regard to claim 3, Williams discloses a filtering and deodorizing device capable of filtering and deodorizing burp gas comprising a substantially elongated, tubular, generally cylindrical pen-shaped housing (11) having an upper end and a lower end (when the housing is angled downwardly) and defining a central axis, said upper end of the pen-shaped housing defining a gas intake port (13), a gas filtration and deodorization media (the fuel cell 15) disposed within the pen-shaped housing, and a generally tubular pen cap (12) removably attached to the upper end of pen shaped housing having an open end for receiving the pen-shaped housing and a closed end in Figs. 1 and 4 and 7 and col. 3, lines 5-56. However, the Williams device operates by

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collecting a sample of gas and does not comprise at least one gas exhaust port in the lower end of the pen-shaped housing. Additionally, the cap of Williams is disposed on the upper end of the housing adjacent the inlet instead of the lower end and fails to define a cap port in the closed end.

The prior art made of record does not teach or fairly suggest the device of claim 1, further comprising a generally tubular pen cap removably attached to the lower end of pen shaped housing having an open end for receiving the pen-shaped housing and a closed end, said pen cap defining a cap port in the closed end of the pen cap.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Lamont, Terasaki, Yamaguchi, Sanfilippo et al., Ito et al. and Meohas references disclose similar devices.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Greene whose telephone number is (571) 272-1157. The examiner can normally be reached on Monday - Friday (9:00 AM to 5:30 PM).

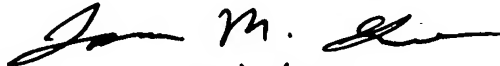
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason M. Greene  
Examiner  
Art Unit 1724

  
10/3/05

jmg  
October 3, 2005